

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON RUBENSTEIN,

Plaintiff,

v.

17-cv-821 (JPO)

NOTICE OF MOTION

ROFAM INV. LLC, JOHN R. BURCH,
PERCEVAL INVESTMENT PARTNERS, L.P.,
HEINZ WIEZOREK, CHARLOTTE WIEZOREK,
EVA WIEZOREK, GARY ATWELL and SUSAN
ATWELL (*as trustees for Susan L. Atwell
Revocable Trust*), LARRY SOUZA and SHARON
SOUZA (*as trustees for The Souza Family Trust*),
ROBERT RUBIN (*as trustee for Robert Rubin
Revocable Trust*), and JENNIFER COLL,
*individually and as trustee for Megan B. Coll
Grantor Trust and as trustee for Robert J. Coll, III
Grantor Trust*,

Defendants,

and

SEARS HOLDINGS CORP.,

Nominal Defendant.

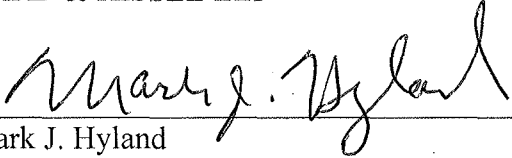
PLEASE TAKE NOTICE that upon the Affidavit of Fernando M. Font, sworn to August 15, 2018, the exhibits thereto, the Second Amended Complaint, the accompanying memorandum of law, and all of the prior pleadings and proceedings had herein, Defendants Rofam Inv. LLC, John R. Burch, Perceval Investment Partners, L.P., Heinz Wiezorek, Charlotte Wiezorek, Eva Wiezorek, Gary Atwell and Susan Atwell (*as trustees for Susan L. Atwell Revocable Trust*), Larry Souza and Sharon Souza (*as trustees for The Souza Family Trust*), Robert Rubin (*as trustee for Robert Rubin Revocable Trust*), and Jennifer Coll (*individually and as trustee for Megan B. Coll Grantor Trust and as trustee for Robert J. Coll, III Grantor Trust*), by and through their attorneys, Seward & Kissel LLP, will move this Court before the Honorable J. Paul Oetken, at the United States District Court, Southern District of New York, 40 Foley Square, New York, NY 10007, at a time and date convenient for the Court, for an Order pursuant

to Fed. R. Civ. P. 12(b)(6) dismissing the Complaint for failure to state a claim upon which relief may be granted and granting such other and further relief as this Court deems just and proper.

New York, New York
August 17, 2018

SEWARD & KISSEL LLP

By:


Mark J. Hyland
Noah S. Czarny

SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
Tel: (212) 574-1200

Attorneys for Defendants Rofam Inv. LLC, John R. Burch, Perceval Investment Partners, L.P., Heinz Wiezorek, Charlotte Wiezorek, Eva Wiezorek, Gary Atwell and Susan Atwell (as trustees for Susan L. Atwell Revocable Trust), Larry Souza and Sharon Souza (as trustees for The Souza Family Trust), Robert Rubin (as trustee for Robert Rubin Revocable Trust), and Jennifer Coll (individually and as trustee for Megan B. Coll Grantor Trust and as trustee for Robert J. Coll, III Grantor Trust)